

C3
12. (Amended) ~~The pot of claim 9, wherein the pot body has a base and side walls, the at least one leg connects to the base at a [first] second end of the leg and connects to the tray at [a second] the first end of the leg, the fluid conduit is between the first end and the second end of the leg.~~

Please add new claims 15-19 as follows:

- C4
SUB FV
15. (New) ~~The pot of claim 8, wherein the fluid absorbing material is soil.~~
16. (New) ~~The pot of claim 8, wherein the fluid absorbing material is wick.~~
17. (New) ~~The pot of claim 8, wherein the fluid conduit exits from the leg on the base portion of the leg.~~
18. (New) The pot of claim 17, wherein the fluid absorbing material is soil.
19. (New) ~~The pot of claim 17, wherein the fluid absorbing material is wick.~~

REMARKS

Applicant has reviewed and considered the Office Action dated March 18, 1999. In response thereto, claims 8, 10, and 12 are amended; and new claims 15-19 are added. As a result, claims 8-13 and 15-19 are pending in the present application. Reconsideration of the present application is respectfully requested.

Claims 8-13 are rejected under 35 U.S.C. §102(b) as being anticipated by Shackelford. In light of the above amendments, Applicant respectfully traverses the rejection for the following reasons.

Claim 8 now recites a pot including a pot body, and a leg which has a base portion at a first end of the leg and a fluid conduit enabling fluid communication to and from the pot body and exiting from the leg proximate to the first end of the leg. Shackelford discloses a method and apparatus for outdoor flower arrangements. In Shackelford, a transparent receptacle 10 is planted in the earth. The receptacle 10 includes anchor tubes 24. Each anchor tube includes a plurality of tube apertures 32 on the walls of the tube. The apertures allow roots of sprouting seeds 14 to extend through and into the earth exterior to the receptacle. Shackelford does not disclose a base portion at a first end of the leg and a fluid conduit enabling fluid communication

to and from the pot body and exiting from the leg proximate to the first end of the leg. Thus, the amended claim 8 is not anticipated by Shackelford.

In addition, there is no motivation in Shackelford to have a base portion at a first end of the leg and a fluid conduit exiting from the leg proximate to the first end of the leg. In Shackelford, the objective is to produce aesthetically pleasing planting arrangements, more particularly, outdoor flow arrangements. It provides a decorative, protective housing for germinating seeds and lets the roots grow outwardly of a receptacle through the plurality of tube apertures. The present invention is to solve the problem that the root is easily damaged because the root has a tendency to grow towards a fluid level, e.g. at proximate the first end of the leg. The claimed pot is designed and configured to prevent the roots from growing along the leg or exit the leg via the fluid conduit. The fluid conduit of the claimed invention is disposed proximate to the first end of the leg. Accordingly, not only does Shackelford not disclose or teach the claimed invention, but also it teaches away from the claimed invention.

Furthermore, the anchor tubes 24 in Shackelford are planted in the earth, and the soil in the tubes, thus, are easily retained in the tubes. There is no need to have a base portion of the tube except maybe during the movement of the receptacle. Shackelford teaches that in most cases, the lower tube ends should be open to facilitate their insertion into the soil and provide better access for soil fluids between the surrounding and receptacle contained soil (see column 3, lines 60–65). On the other hand, in the present invention, the leg is generally connected to a tray which holds excessive fluid, or directly connected to open water, etc. Without a base portion, the fluid absorbing material in the leg would fall out during the use of the pot. Thus, Shackelford does not teach or suggest the above discussed features recited in claim 8.

Therefore, Applicant respectfully submits that claim 8 patentably distinguishes over Shackelford. Claims 9–13 and 15–19 which are dependent from claim 8 are also patentable. In addition to the features recited in claim 8, claims 9–13 and 15–19 include the other features that are patentable over Shackelford. For example, Shackelford does not disclose or teach a fluid absorbing material being a wick as recited in claims 16 and 19.

Claims 8–13 are also rejected under 35 U.S.C. §103(a) as being unpatentable over Moskowitz in view of Shackelford. Moskowitz is a design patent which does not show or describe the above discussed features in claim 8. Further, there is no motivation or suggestion to combine Moskowitz with Shackelford. Moskowitz discloses an entirely different type of flower pot from Shackelford. Thus, Applicant respectfully submits that claims 8–13 and 15–19 are patentable over the cited references.

In view of the above, it is respectfully submitted that the present application is in a condition for allowance. Reconsideration of the application and a favorable response are respectfully requested.

If a telephone conference would be helpful in resolving any remaining issues, please contact the undersigned at (612)336-4733.

Respectfully submitted,

MERCHANT & GOULD P.C.
3100 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402
FAX 612/332-9081
PHONE 612/332-5300

By



Min Xu
Registration No. 39,536
AX/mas